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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,110	10/04/2004	Olivier Martinot	Q84011	4988

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SUGHRUE MION, PLLC
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EXAMINER

LIN, WEN TAI

ART UNIT	PAPER NUMBER
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2154

MAIL DATE	DELIVERY MODE
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08/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/510,110		MARTINOT ET AL.	
	Examiner		Art Unit	
	Wen-Tai Lin		2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-6 are presented for examination.
2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show English legends as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP 608.02(d).
3. The specification is objected to because the specification does not contain proper section headers. Appropriate correction is required.
4. If applicant desires to claim the benefit of a prior-filed application under 35 U.S.C. 365(c), a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) must be included in the first sentence(s) of the specification following the title or in an application data sheet. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-6 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Specifically, claims 1 and 5 each requiring

means (2) for instantiating said logical rules, said instantiation being effected as a function of said service and independently of the technology of said network,
means (2) for determining measurement points independently of the technology of said network

The most relevant teaching in the specification is found at lines 22-25 on page 4, which states:

As a function of the SLS parameters coming from the means 1, the means 2 search the means 3 for the logical rules necessary for setting up the measurement and determine from those rules the measurement points for setting up the quality of service measurement.

As a key element in the effort of automating the placement of QoS measurement points in network-independent or technology-independent environments, the mere teaching about "mean 2" is that it is a function of SLS parameters, that it searches the collected logical rules that are derived from experts (page 2, lines 25-29), and that it determines from the rules the measurement points (page 4, lines 22-25), wherein the SLS parameters defines how a service must be processed on a network to respect a

particular QoS (page 1, lines 19-20). Throughout the entire disclosure, there is no teachings, either in general description or via best mode examples, describing: how are the measurement points derived out of the logical rules and how do the SLS parameters effect the determination of these measurement points. It is submitted that Applicant's disclosure has not enabled any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, as required by 35 USC 112, first paragraph.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elleson et al. (hereafter "Elleson")[U.S. Pat. No. 6459682] in view of Official Notice.

8. As to claims 1 and 3, Elleson teaches an architecture/system for implementing service level agreement (SLA) from which rules/policies associated with a quality of service are derived, the system has a pair of egress and ingress devices for controlling traffic flows [e.g., Fig. 1A-1B], wherein QoS performance monitoring is conducted by

measuring traffic information at the egress and ingress devices [col.5, line 63 – col. 6, line 15], with statistics stored in a policy/directory server [col.7, lines 16-45] and periodically polled for traffic control [col.7, lines 1-15].

Elleson generally teaches about implementing a general SLA architecture with measurement points placed at the edge devices such as ingress and egress devices, which is inherently independent of network technology. Elleson does not specifically teach that the measurement points are determined based on a set of logical rules collected from experts/operators.

However Official Notice is taken that the idea of establishing rules from experts or operators is well known in the art, in particular in the area of designing an expert system where all sort of rules are collected from human expertise in the respective fields.

It would have been obvious to one of ordinary skill in the art to use operator entered rules as foundation for placing the QoS measurement points in a general environment (i.e., network/technology independent) and instantiate the rules to find physical measurement points in specific network environment because (1) Elleson's system is a rule-based SLA architecture and (2) by generalizing the placement of measurement points from rules, Elleson's method could be applied to a wide variety of network environments.

9. As to claim 2, Elleson the system further comprising means for comparing said collected data with threshold values [e.g., col.5, lines 48-54].

10. As to claim 4, Ellesson teaches that the system further comprises means for entering technical parameters defining said service [e.g., col.1 lines 38-65].

11. As to claims 5-6, since the features of these claims can also be found in claims 1-4, they are rejected for the same reasons set forth in the rejection of claims 1-4 above.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Sufleta [U.S. Pat. No. 6785237];

Takeda [U.S. PGPub 20020055999];

Han H S et al. [KR 2002058760A]; and

Pickering et al. [U.S. PGPub 20040062250].

13. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 days from the mail date of this letter. Failure to respond within the period for response will result in ABANDONMENT of the application (see 35 U.S.C. 133, M.P.E.P. 710.02, 710.02(b)).

Conclusion

Examiner note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wen-Tai Lin whose telephone number is (571)272-3969. The examiner can normally be reached on Monday-Friday(8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

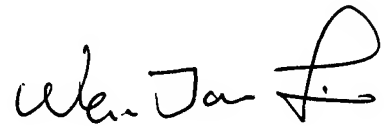
(571) 273-8300 for official communications; and

(571) 273-3969 for status inquiries draft communication.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wen-Tai Lin

August 8, 2007


8/8/07